
From: Campbell Wes [mailto:wcampbell@tricountycoal.com]

2011 MAR -4 P 5:19

Sent: Friday, March 04, 2011 3:41 PM

To: E-Rulemaking - MSHA

Subject: RE: Written Comments to Lowering Miners' Exposure to Respirable Coal Mine Dust,
Including Continuous Personal Dust Monitors

Wesley T. Campbell

Manager of Safety and Training

Tri County Coal Co., LLC

Crown III Mine

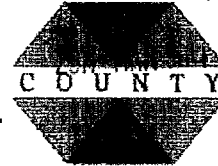
Office: (217) 627-2161 ext. 224

Cell: (217) 303-2047

Email: wcampbell@tricountycoal.com

AB64-COMM-16

Tri County Coal
2 Mine Ave • Farmersville, IL 62533



P 5:19

March 4, 2011

Roslyn B. Fontaine, Acting Director
MSHA, Office of Standards, Regulations, and Variances,
1100 Wilson Boulevard, Room 2350,
Arlington, Virginia 22209- 3939.

File
Mailed
3/4/11
Mailed to MSHA
- Arlington, Va
Off. of Reg. Affairs
Washington DC

Re: RIN 1219-AB64 (Comments to address Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors)

Dear Ms Fontaine:

Attached are comments from Tri County Coal, LLC, regarding the proposed Respirable Dust Regulations. We appreciate the opportunity to submit comments.

Tri County Coal, LLC, operates one underground mine in central Illinois called Crown III Mine. Crown III Mine, owned by Springfield Coal Company, is a UMWA-represented mine that employs approximately 225 wage and salaried employees. The underground mines in Illinois are large, well-run operations with excellent health and safety records when compared with other mines of similar size across the nation. Tri County Coal shares the same goals as coal operators across this state and the nation: to eliminate coal worker's pneumoconiosis (CWP) from our industry. Our employees work diligently to maintain the lowest possible levels of respirable dust in our mine.

General Comments:

Dust exposures have been dropping steadily in the Midwest and are down roughly 30% since 2007 due to the following improvements:

- Scrubbers
- Blowing ventilation
- Fishtail ventilation on super sections
- Deep cuts
- Perimeter cuts in rooms

Most mines in Illinois and the Midwest make their living on highly productive continuous miner sections. As such, they have been able to again become competitive against large western surface mines after years of declining production due to utilities

switching fuel sources to meet the requirements of the Clean Air Act. This rule will penalize underground mining and may make it impossible for mines to work more than 3 to 4 days per week. The rule will certainly impact Crown III Mine negatively as our systemic ventilation system will not meet the standards if the final rule is adopted. The loss of jobs will be devastating for this area of Illinois, as well as devastating for the Midwestern states that are already in jeopardy.

For all intents and purposes, CWP has been eliminated in the Midwest due to our combined efforts. The NIOSH data show that Indiana, Illinois and Western Kentucky have CWP results that are lower than what would be expected in the general population (<.5%). This is based on over 5000 x-rays in the sample compared to a few hundred x-rays in Southern WV, Eastern Kentucky and Western VA, that NIOSH extrapolated to suggest that the whole industry is seeing a resurgence of the disease. In fact, their own research has stated that the "hot spots" are due to Silicosis rather than CWP. To use this data to justify a reduction in the coal dust standard is ill-advised and unwarranted.

Tri County Coal sees no reason for a universal rule that affects mines who are managing respirable dust control. Crown III representatives attended a Stakeholders Meeting titled "Best Practices for Controlling Respirable Dust in Coal Mining" in April 2010. At this meeting held in Evansville, Indiana, which is in District 8, attendees were told that Illinois and District 8 have significantly lower incidents of CWP than most other states and districts. As has been MSHA's trend in policymaking and enforcement, imposing this proposed rule on all districts based on the problems in a few districts is a continuation of the "One size fits all" approach.

MSHA's economic projections boast that overall health costs would be reduced dramatically in the long run for all miners in all districts. However, if the health costs associated with CWP are not being experienced in District 8 to the extent they are in the "Hot Spots", then the cost to the Midwest to implement these proposed regulations will be far greater than the cost savings. While the operators acknowledge that there may be substantial health care costs savings in the areas with high rates of CWP, there will be far greater economic hardships placed on mines in districts with little incidence of CWP. This kind of economic justification is very similar to Senator Boxer's claim that the proposed 2010 Climate Change bill debated last year would only result in an average increase of \$5.00 per month per US citizen. Of course, she failed to reveal that the states that use coal for power generation will pay significantly more per month than the Eastern and Western states that use very little or no coal for power generation. Districts such as District 8 should not have to bear unreasonable costs and penalties for Districts that do not manage respirable dust exposure and that are considered "Hot Spots."

The industry has supported the development of the Continuous Personal Dust Monitor. We have agreed that full shift sampling of the highest risk miner on all production shifts will provide a valuable database for researchers to use to pinpoint areas in need of improvement. These practices alone have and would continue to effectively reduce the dust concentrations that miners are exposed to without any alteration in this standard. The use of CPDMs in conjunction with current practices would also provide the miners

with real-time data they can use to keep themselves from being over-exposed. This rule prevents any of these improvements by continuing the antiquated practice of area sampling rather than personal sampling and adds to the complexity immeasurably by including new plan approvals and details whose only purpose appears to be the generation of citations for minute details.

Comments to Specific Sections of the Proposed Rule:

70.2: Definitions

Weekly cumulative exposure/weekly permissible accumulated exposure (WAE) will make it extremely difficult for a section to work over 40 hours per week with one crew. If a mine has to utilize two different work crews during a week as a result of exceeding the WAE, the cost will go up significantly and will be prohibitive. Has MSHA factored into its budget projections the possibility that mines will likely have to employ more people to maintain production levels required to meet contractual obligations? Why not allow for changing out people or administrative controls?

MSHA list the following remedies that operators may have to use if the WAE is reached before the end of the work week:

- Limit production
- Reconfigure major ventilation devices (install new shafts)
- Install major ventilation controls (overcasts, regulators, etc.)

These suggested "remedies" are difficult and costly enough to complete in newer mines, but understand that the costs and complexities involved with taking this action in mines that have operated for 20 or more years and who have finite reserves due to extensive mining will likely be cost-prohibitive. Many small mines across the nation such as Crown III will likely shut their operations down instead of investing millions of dollars with little opportunity to recoup their investments. Has MSHA considered these consequences to small and/or older operations of imposing the WAE? The potential effect outlined here clearly contradicts MSHA's assertion that these regulations will not have a significant economic impact on a substantial number of small entities. For the approximately 225 families who rely on Crown III mine for their income and financial security, this statement couldn't be further from reality.

Normal Production Shift: As written, for a dust sample to be valid, the production for the sampled shift would have to be equal to or greater than the prior 30 day average. This will result in many invalid samples since there will always be a 50% chance that production will be less than the prior month's average. Currently, operators must produce 50% of the monthly average for a sample to be valid. MSHA currently requires its samples to be 80% of the previous monthly average. MSHA should consider using 75% of the prior 30 days average to reduce the number of invalid samples that are likely to occur if the standard remains as written.

70.100: Respirable Dust Standards

In the Midwest there is no sound scientific data that shows CWP cases will be reduced significantly by lowering the dust exposure to half the current standard. With Eastern US

cases on the rise and sampling in the three state regions showing a high number of low weight gain samples, why doesn't MSHA enforce the current standard and sampling requirements across the country uniformly? Single shift samples are not "representative samples" of what a miner is exposed to on a normal workday basis because a single sample that results in abnormally high or low weight gains may just be an irregular or invalid sample for numerous reasons, many of which are the same reasons why production averages are based on 30-day averages - not single shift production totals.

A second concern with this provision is the requirement to maintain 0.5 mg/m³ or less respirable dust in the intake airways 200 feet outby the faces. Since MSHA has introduced the new rock dust standards, mines are required to maintain significantly more rockdust in the intake entries which readily becomes airborne when traveled by miners during the course of a shift either on foot or while operating equipment. This rockdust travels immediately and directly into the sampling air stream and contributes to the total amount of respirable dust being measured. This condition is already being recognized as a major source of weight gain in many respirable dust samples.

70.201: Respirable Dust Standard when Quartz is Present

Even though the sampler CPDM was designed and tested for personal sampling and personal exposure, the regulations would require it to be used as an area sampler therefore defeating its designated purpose. The CPDM was not designed to hang up and be left unattended. It was designed to provide immediate impact to the user and allow the user to make immediate adjustments in behavior, tactical positioning in relation to dust sources, and/or mining procedures.

Has MSHA realistically and accurately considered the economic impact to operators of introducing CPDMs into the workplaces as outlined in this standard? This question arises because of the MSHA regulation that requires miners who work alone to have a personal gas detector or the requirement for each work group to have at least one detector in the group. The regulation has greatly increased the number of gas instruments that mines are required to maintain. For numerous reasons, mine operators must now have almost one detector for every miner on site. At \$300 to \$500 per instrument, operators have increased their operating expenses for gas detectors at least three-fold as each shift must maintain a minimum number of detectors necessary to satisfy the regulation. A cache of additional detectors must be available for use to cover for detectors that fail unexpectedly or become damaged or lost during use. The requirements for CPDMs will be similar to the gas detectors, but at a much greater cost per instrument.

Does MSHA really want all miners to know how to access the CPDM information that is stored on the unit? The training requirements noted in this regulation are unreasonable and could likely result in many voided samples if miners have access to information stored in the device. Tri County believes that because management is responsible for the maintenance, calibration and sampling process, only persons certified in sampling, maintenance and calibration should be able to access data not readily displayed during use. Miners should only be allowed to carry CPDMs and should not be allowed to attempt to access data as this will only have negative effects on the sampling process.

70.206(b)(9): CDPM Performance Plan

This requirement leaves an open-ended area for the District Manager to disapprove a plan for any reason by adding the requirement for the plan, "any other information required by the District Manager." District 8 has been through about 6 District Managers in the last several years. Because some of these DMs were only serving limited terms, they would often elect to defer plan change requests to incoming DMs. These delays resulted in many plan change requests taking months and months to be acted on by a DM. Operators should have to comply with a firm, finite set of guidelines to ensure compliance instead of constantly trying to "hit a moving target."

70.207(e): Sampling of MMUs using CMDPSUs

This section requires single shift samples for CMDPSU. If a single sample is out of compliance the operator must revise the plan without any time to test and validate any changes. Provisions call for labor input on changes but various areas of the regulations have 3-day to 7-day requirements for submitting changes. This is inadequate time to test and determine what changes should be made and review them with labor. The new regulations require plan changes based upon a single bad sample and require District Manager approval prior to implementation. Considerable down time can occur with this system and MSHA may hold operators hostage to get what MSHA wants in the plans – not what is best for the operators and their employees.

Why does one sample take a section out of compliance but MSHA requires five valid samples to get back into compliance? What if one sample out of the five is out of compliance? Must operators continue to sample until all 5 samples are within compliance or is the MMU out of service pending plan changes? Why should the operator be cited by a single sample that exceeds the standard yet be required to attain 5 samples at or below the standard for the citation to be abated? Where is the logic and fairness of this requirement? The definition of "average" is that there is a "mean" of a series of numbers. There seems to be a double standard in that MSHA can cite an operator for failure of a single sample, yet for a sample to be valid, the production results on the shift that is sampled must be equal to or greater than the prior 30 day average. Where is the logic in this?

70.208: Sampling of MMUs: requirements when using CPDMs

This section would require Crown III Mine to purchase at least 42 CPDMs per section. Eight would be required for miner operators who "Hot Seat" change, eight for two downwind roof bolters who "Hot Seat" change and 12 for ram car operators who "Hot Seat." At least 50% more CPDMs would be required to address unexpected problems with samplers since it appears that a face machine could not operate if it was not being sampled. Since every one of the production pieces of equipment on a blowing ventilation MMU is sampled why will MSHA not allow administrative controls?

70.208(f)(3)-(4):

The language is confusing for plan changes using CPDMs: Does the operator have three days or seven days to submit revisions to the ventilation plan and wait on approval? Tri County's interpretation of this part of the regulations is that once the operator submits the

proposed corrective actions to come back into compliance, the MMU that is out of compliance is out of production until the District Manager approves the proposed corrective actions. Does MSHA not recognize that there could be a substantial loss of production during this approval process? Currently it is not uncommon for the District Manager to take weeks or even months to approve plans submitted by operators.

70.209: Sampling of Designated Areas

Every sample that is out of compliance will result in a citation. Tri County interprets this section of the regulation as requiring the operator to submit corrective action revisions to the Ventilation Plan to the District Manager. Is this the correct interpretation, and if so, this will certainly result in the District Manager being flooded with countless proposed plan changes. This increase in plan changes will certainly increase the response time for operators and will likely have operators waiting weeks or months for approval. During this time, is the Designated Area required to be out of production? If the Designated Area is the "Surge Bin" or "Slope Belt Head" of a mine (which is the location where all of the coal produced at a mine must pass to exit the mine for processing) is the mine shut down or is it allowed to continue to operate pending corrective actions approvals? If the area is taken out of production during the approval process, has MSHA included the loss of production and revenue in their economic assessments?

72.800: Single, Full Shift Measurement of Respirable Coal Mine Dust

This provision allows the Secretary to use a single, full shift measurement of respirable coal mine dust to determine average concentrations on a shift if that measurement accurately represents atmospheric conditions to which a mine is exposed during such shift. Does MSHA realize there are factors other than atmospheric conditions that affect respirable dust samples? Miners who are assigned to wear a CMDPSU or CPDM can significantly and negatively affect the sampling results by their actions, such as dropping a sampling unit onto a machine or mine floor, brushing off or "patting" off dust from their work clothes while wearing a sampling device, or simply taking it off or laying it down briefly to attend to personal hygiene needs.

75.332: Working Sections and Working Places

This section states that each MMU will be ventilated by a separate split of intake air directed by overcasts, undercasts or other permanent controls. For mines set up with Fish Tail ventilation such as Crown III Mine, this will require the mine to double the number of belt lines and belt drives thus doubling the hazards associated with them. This mine would also be required to double the number of travelways, escapeways and air courses, all of which would require a substantial increase in operating costs. There would be additional costs associated with development of stoppings, overcasts and airshafts. By separating the air courses in a Fish Tail ventilation system, MSHA is increasing the rubbing surface in air courses and reducing the efficiency of the ventilation system thus reducing the amount of air delivered to the working sections. Fish Tail sections with multiple entries reduce the resistance and make it more efficient to ventilate the section.

Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

Tri County believes MSHA has grossly underestimated the effect of these proposed rules on the industry. From having to purchase and maintain mandated personal dust monitors that have not been adequately field tested for reliability and accuracy to the possibility of mines having to hire more employees, drill new air shafts, or totally reconstruct the ventilation systems because "Fish Tail" ventilation systems are no longer allowed, MSHA is naïve if it thinks these changes will not significantly affect energy supplies, distribution or use. As stated earlier, District 8 will incur much greater costs with little or no obvious improvement in its rate of CWP because it is already among the Districts with the lowest CWP rate in the industry.

Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

Again, Tri County believes MSHA is grossly underestimating the impact of these proposed rules on small entities. Mines such as Crown III Mine who have been operating for 20 or more years can not cost-effectively re-structure their ventilation systems to comply with the proposed regulations and remain competitive with large operators. Small mines will likely have to close resulting in the loss of livelihoods for thousands of experienced miners.

Final Comments:

These proposed regulations repeatedly require operators to make approved respiratory equipment available to affected miners when the respirable dust standards are exceeded. Is MSHA aware that approved respiratory equipment, i.e., HEPA respirators, are available every day at nearly every coal mine? Does MSHA realize that miners are reminded and encouraged to wear personal protective equipment, such as respirators, safety glasses, and hearing protection constantly and most assuredly during Annual Refresher Training at coal mines? When will MSHA hold miners accountable for their actions instead of constantly penalizing operators when miners knowingly or willfully break the law or fail to protect themselves from hazards?

MSHA repeatedly requires operators to take corrective action to lower the concentration of respirable dust to or below the applicable standard and then record the corrective actions taken in the same manner as the records for hazardous conditions required by 75.363. This requirement may be the result of any indication an operator may have that a sample is going to be in excess of the standard, or may be the result of a citation written for exceeding the applicable standard. In either case, entering the "corrective actions" in the book of hazards immediately sets that supervisor, manager or operator up for an Unwarrantable Failure Order in that he knew (documented) a situation as a hazard and then failed to correct the hazard if the actions taken by the operator failed to reduce the respirable dust concentrations to levels at or below the applicable standard. This requirement has self-imposed "Entrapment" written all over it and will most certainly result in operators being unable to maintain or acquire competent mining professionals

willing to work as Certified Dust Persons or Supervisors. Coal operators would then be at the mercy of hiring contractors who are willing to accept employment doing Certified Dust Sampling yet the operators would maintain all the responsibilities and consequences.

Tri County appreciates the opportunity to submit these comments to the proposed regulations and is willing to discuss any of the concerns in detail with MSHA officials.


Sincerely,



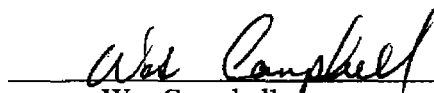
Archie Parker, Jr
Managing Partner



Tony Liebscher
President -- Local Union



Gary Ronald
Managing Partner



Wes Campbell
Manager of Safety and Training